

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RICHARD ALLAN CASE,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF JUSTICE, FEDERAL BUREAU
OF INVESTIGATION, and OFFICE
OF INFORMATION POLICY,

Defendants.

No. CV-12-0500-JTR

ORDER ADOPTING REPORT AND
RECOMMENDATION

BEFORE THE COURT is Magistrate Judge Rodgers' Report and Recommendation to Grant Defendants' Motion for Summary Judgment. ECF No. 74. Plaintiff appears *pro se*. Defendants are represented by Rolf H. Tangvald. Plaintiff filed objections to the Report and Recommendation and Defendants filed a response to Plaintiff's objections. ECF Nos. 77, 79, 80. The Court has considered the briefing and the file, and is fully informed.

Under 28 U.S.C. § 636(b)(1), a district court judge must make a *de novo* determination of any part of the magistrate judge's report and recommendation to

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1 which an objection is made. The district court judge “may accept, reject, or
2 modify, in whole or in part, the findings or recommendations made by the
3 magistrate judge.” *Id.* The district court is also empowered to “receive further
4 evidence or recommit the matter to the magistrate judge with instructions.” *Id.*;
5 Fed. R. Civ. P. 72(b)(3).
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8 Plaintiff has set forth eight objections to the Magistrate Judge’s Report and
9 Recommendation, ECF No. 77. Each of these objections is examined in turn.
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11 ***1. The Magistrate Judge entered the report and recommendation before***
12 ***permitting Plaintiff to file a reply to Defendants’ Response to Plaintiff’s***
13 ***Cross-Motion for Summary Judgment***

14 Defendants filed a motion for summary judgment on March 29, 2013. ECF
15 No. 40. The motion was set for hearing without oral argument on September 16,
16 2013, after a delay to accommodate the Plaintiff. ECF Nos. 48, 60. Plaintiff did
17 not file his opposition to summary judgment until September 10, 2013, just six
18 days before the hearing date. Plaintiff also filed a cross-motion for summary
19 judgment on September 10, 2013, which was set for the same September 16, 2013,
20 hearing date as Defendants’ motion for summary judgment. Defendants filed a
21 response to Plaintiff’s cross-motion for summary judgment on September 24,
22 2013. ECF No. 73.
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26 The Magistrate Judge noted in his Report and Recommendation that the
27 timing of Plaintiff’s “cross-motion did not afford Defendants with adequate time to
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1 respond prior to the hearing date. ECF No. 74 at n.1. The Magistrate Judge
2 additionally noted that because Defendants were prevailing on summary judgment,
3 Plaintiff could not prevail on his cross-motion in any event. *Id.*
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5 This Court finds that Plaintiff's objection is moot. Even had the Magistrate
6 Judge delayed ruling on Plaintiff's cross-motion for summary judgment until
7 Plaintiff could file a reply brief, Plaintiff's cross-motion would have become moot
8 when the Magistrate Judge issued his report and recommendation to grant
9 Defendants' motion for summary judgment and dispose of the case. ECF No. 74.
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12 ***2. The Magistrate Judge entered the report and recommendation before***
13 ***Plaintiff's prior appeal to the district court was resolved***

14 Plaintiff previously filed an "appeal with objections" of the Magistrate
15 Judge's order denying in part Plaintiff's Motion for Continuance to Permit
16 Discovery and to Oppose Summary Judgment and denying Plaintiff's Motion for
17 Hearing with Oral Argument, ECF No. 60. Plaintiff objected that the Magistrate
18 Judge issued his report and recommendation before receiving the benefit of the
19 district court's order on Plaintiff's appeal. However, after Plaintiff filed his
20 objections that district court issued an Order Overruling Plaintiff's Objections and
21 Denying Appeal, ECF No. 78. Plaintiff's objection is therefore moot as the district
22 court determined that his prior appeal and objections were without merit.
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27 ***3. Sufficiency of the findings and recommendations***
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1 Plaintiff's objections numbers three through eight each attack the Magistrate
2 Judge's proposed findings and recommendations.

3 The Court has reviewed the Magistrate Judge's Report and Recommendation
4 and the facts presented at summary judgment. The Court concludes that the
5 Magistrate Judge's factual findings are supported by the record and that the
6 recommendation to grant summary judgment in favor of the Defendants is
7 appropriate in light of summary judgment standards and FOIA law.
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10 Therefore, the Court adopts the Report and Recommendation in its entirety
11 and dismisses this action with prejudice.
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13 Accordingly, **IT IS HEREBY ORDERED:**

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15 1. The Court **ADOPTS** Magistrate Judge Rodgers' Report and
16 Recommendation, **ECF No. 74**.

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18 2. Defendants' Motion for Summary Judgment, **ECF No. 40**, is
19 **GRANTED**.

20 3. Plaintiff's Motion for Summary Judgment, **ECF No. 67**, is **DENIED**.

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22 4. Plaintiff's Complaint, **ECF No. 6**, is **DISMISSED WITH**
23 **PREJUDICE**.

24 5. All hearings and other deadlines are **STRICKEN**.

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IT IS SO ORDERED. The Clerk's Office is directed to enter this Order and provide a copy to the *pro se* Plaintiff and to counsel for Defendants.

DATED this 13th day of December, 2013.

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